

APPEAL NO. 030730  
FILED MAY 14, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 20, 2003. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 14th, 15th, and 16th quarters. The respondent (carrier) appealed, arguing that the hearing officer's determinations are against the great weight and preponderance of the evidence. The claimant responded, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on                     . The qualifying periods for the SIBs quarters in dispute began on May 2, 2002, and ended on January 29, 2003. The claimant testified that she was self-employed as an independent contractor salesperson of children's educational and development toys. She stated that she worked approximately 30 hours per week setting up toy exhibits at various locations, including clients' homes and shopping malls and centers. The claimant stated that her business expenses exceed her profits and offered as documentary evidence her business records. Dr. S medical reports dated June 9, 2002, and October 17, 2002, reflect that the claimant should not work more than four hours per day. Additionally, the claimant testified that during the qualifying period of the 16th quarter she searched for employment commensurate with her ability to work.

Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and administrative rule criteria for SIBs. At issue in this case is whether the claimant met the good faith job search requirements of Section 408.142(a)(4) by meeting the requirement of Rule 130.102(d)(1).

The hearing officer determined that the claimant had satisfied the good faith requirement in the qualifying periods for the 14th, 15th, and 16th quarters in accordance with Rule 130.102(d)(1) because she had made a good faith effort to obtain employment commensurate with her ability to work during each of the qualifying periods in dispute because she has returned to work in a position which is relatively equal to her ability to work. We have previously recognized that the question of whether the employment is "relatively equal" is a question of fact for the hearing officer to decide and that the focus of the inquiry is not on whether the wages are the same. See Texas Workers' Compensation Commission Appeal No. 000616, decided April 26, 2000; Texas Workers' Compensation Commission Appeal No. 000608, decided May 10, 2000. The record contains sufficient evidentiary support for the hearing officer's determinations that the claimant returned to work in a position that was "relatively equal" to her ability to work in the qualifying periods for the 14th, 15th, and 16th quarters and

that she, therefore, satisfied the good faith requirement under Rule 130.102(d)(1). Nothing in our review of the record demonstrates that those determinations are so contrary to the great weight of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to reverse the hearing officer's good faith determinations on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL R. OLIVER, PRESIDENT  
221 WEST 6TH STREET  
AUSTIN, TEXAS 78701.**

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Veronica Lopez  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge